
STATE OF INDIANA



MEMORANDUM

TO: All Political Subdivisions

FROM: Distressed Unit Appeals Board

DATE: September 26, 2008

SUBJECT: Policies and Procedures for Petitioning the Distressed Unit Appeals Board
for Circuit Breaker Relief

The purpose of this memorandum is to inform the fiscal officers of all political subdivisions of the procedures for filing a petition with the Distressed Unit Appeals Board (DUAB). The DUAB was established to receive petitions from political subdivisions that are expected to have a reduction in their property tax collections of at least five percent (5%) in a calendar year as a result of the Circuit Breaker caps on property tax bills.

DUAB MEMBERSHIP

DUAB Membership.

The DUAB consists of the following nine (9) members:

- The Director of the Office of Management and Budget or designee (*Chairperson*).
- The Commissioner of the Department of Local Government Finance or designee.
- The Commissioner of the Department of State Revenue or designee.
- The State Examiner of the State Board of Accounts or designee.

*The following three (3) members appointed by Governor (*serve at pleasure of Governor*):

- One (1) member from nominees submitted by Indiana Association of Cities and Towns.
- One (1) member from nominees submitted by Association of Indiana Counties.
- One (1) member from nominees submitted by Indiana Association of School Superintendents.

****A member nominated and appointed must be an elected official of a political subdivision.***

- One (1) member appointed by the Governor (*serves at pleasure of Governor*).
- One (1) member appointed by the Speaker of the House of Representatives (*4 year term*).

PROCEDURES FOR PETITIONING THE DISTRESSED UNIT APPEALS BOARD

Petition for Relief.

For property taxes first due and payable in 2008 and thereafter, the fiscal body of a distressed political subdivision may petition the DUAB for relief from the Circuit Breaker credit for a calendar year. IC 6-1.1-20.3-6(a).

Note: A “*distressed political subdivision*” is defined as a political subdivision (e.g., county, city, town, township, library district, fire protection district, school corporation, special taxing district) that expects to have its property tax collections reduced by at least five percent (5%) in a calendar year as a result of the Circuit Breaker credit. IC 6-1.1-20.3-2.

Proposed Financial Plan.

A petition to the DUAB must include a proposed financial plan for the distressed political subdivision. The proposed financial plan must include the following:

- Proposed budgets that would enable the distressed political subdivision to cease being a distressed political subdivision.
- Proposed efficiencies, consolidations, cost reductions, uses of alternative or additional revenues, or other actions that would enable the distressed political subdivision to cease being a distressed political subdivision.
- Proposed increases, if any, in the percentage thresholds (specified as a percentage of gross assessed value) at which the Circuit Breaker credit will apply, including any varying percentages for different classes of property [i.e., homestead, residential real property, long term care facilities, agricultural land, nonresidential real property, personal property].
- Proposed reductions, if any, to the Circuit Breaker credits (by percentages), including any varying percentage reductions for different classes of property. IC 6-1.1-20.3-6(b).

Example: *Proposing a 10% reduction to the Circuit Breaker credit as applied to all classes of property within the distressed political subdivision.*

Note: *Many of the terms above are defined in the attachment DUAB Administrative Policies and Procedures.*

DUAB REVIEW PROCESS

DUAB Administrative Procedures Governing the Petition.

The DUAB may adopt procedures governing the timing and required content of a petition. IC 6-1.1-20.3-6(c).

Note: See the attached DUAB Administrative Policies and Procedures.

DUAB Petition Review.

If the fiscal body of a distressed political subdivision submits a petition, the DUAB is required to review the petition and assist in establishing a financial plan for the distressed political subdivision. IC 6-1.1-20.3-7(a).

In reviewing a petition, the DUAB is required to consider:

- the proposed financial plan;
- comparisons to similarly situated political subdivisions;
- the existing revenue and expenditures of political subdivisions in the county; *and*
- any other factor considered relevant by the DUAB. IC 6-1.1-20.3-7(b).

Affected Political Subdivisions Must Adopt Financial Plan.

The DUAB may authorize relief from the Circuit Breaker credit for a calendar year if the governing body of each political subdivision in the county that is affected by the financial plan has adopted a resolution agreeing to the terms of the financial plan. IC 6-1.1-20.3-8(a).

DUAB Options for Relief.

If the governing body of each political subdivision in the county affected by the financial plan adopts a resolution agreeing to the terms of the plan as described above, the DUAB may do any of the following:

- Increase the percentage thresholds (specified as a percentage of gross assessed value) at which the Circuit Breaker credit applies to a person's property tax liability in the political subdivision.
- Provide for percentage reductions to Circuit Breaker credits in the political subdivision.
- Provide that some or all of the property taxes that are being imposed to pay bonds, leases, or other debt obligations that would otherwise be included in the calculation of the Circuit Breaker credit in the political subdivision will not be included for purposes of calculating a person's Circuit Breaker credit. IC 6-1.1-20.3-8(b).

DUAB to Conduct Audits and Reviews.

If the DUAB provides relief as described above, the DUAB is required to conduct audits and reviews as necessary to determine whether the affected political subdivision is abiding by the terms of the approved financial plan. IC 6-1.1-20.3-8(c).

DUAB Staffing and Assistance.

The Department of Local Government Finance (“Department”) is required to provide the DUAB with the staff and assistance that it reasonably requires.

The DUAB may contract with accountants, financial experts, and other advisors and consultants as necessary to carry out the DUAB’s duties. IC 6-1.1-20.3-5.

The DUAB must keep a record of its proceedings and its orders. IC 6-1.1-20.3-9.

JUDICIAL REVIEW OF DUAB FINAL DETERMINATION

Judicial Review by the Indiana Tax Court.

A distressed political subdivision may petition the Indiana Tax Court for judicial review of a final determination of the DUAB. The action must be taken to the Indiana Tax Court under IC 6-1.1-15 [Procedures for Review and Appeal of Assessment and Correction of Errors] in the same manner that an action is taken to appeal a final determination of the Indiana Board of Tax Review (IBTR). The petition must be filed in the Indiana Tax Court not more than forty-five (45) days after the DUAB enters its final determination. IC 6-1.1-20.3-10.

The Indiana Tax Court must adopt rules and procedures under which proceedings are heard and decided. IC 6-1.1-20.3-11.

The burden of demonstrating the invalidity of an action taken by the DUAB is on the party to the judicial review asserting the invalidity.

The validity of an action taken by the DUAB must be determined in accordance with the standards of review as applied to the action at the time it was taken.

The Indiana Tax Court must make findings of fact on each material issue on which its decision is based.

The Indiana Tax Court must grant relief under IC 33-26-6-7 [written decision required; direct appeal to the Indiana Supreme Court] only if it determines that a person seeking judicial relief has been prejudiced by an action of the DUAB that is:

- arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- contrary to constitutional right, power, privilege, or immunity;

- in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- without observance of procedure required by law; *or*
- unsupported by substantial or reliable evidence. IC 6-1.1-20.3-12.

If you have any questions about this memorandum, please contact Christopher D. Atkins, General Counsel and Policy Director of the Office of Management and Budget at (317) 234-2115 or chatkins@omb.in.gov; or Timothy J. Rushenberg, General Counsel of the Department of Local Government Finance at (317) 233-6770 or trushenberg@dlgf.in.gov.

Attachment:

DUAB Administrative Procedures (7 pages)

DUAB ADMINISTRATIVE POLICIES AND PROCEDURES

Rule 1. Purpose and Applicability.

The purpose of these procedures is to establish policies and procedures to govern administrative proceedings before the Distressed Unit Appeals Board (DUAB). These definitive policies, procedures, procedural requirements, and evidentiary controls are established in accordance with IC 6-1.1-20.3-6(c) and are deemed essential to assure that the administrative appeals before the DUAB are conducted in the most uniform and objective manner possible.

Rule 2. Definitions.

Sec. 1. "Consolidations" defined.

"Consolidations" shall have the same meaning as "reorganization" as defined in IC 36-1.5-2-5.

Sec. 2. "Cost reductions" defined.

"Cost reductions" means proposed decreases in spending levels, staffing levels, and proposed elimination of current programs.

Sec. 3. "Efficiencies" defined.

"Efficiencies" means operational or management practices that deliver existing services at lower cost, including but not limited to consolidations, cost reductions, cooperative purchasing, performance measurement, pooling resources with the state and/or other political subdivisions, contracting with other entities to provide services, and other actions the political subdivision deems necessary in order to operate more efficiently.

Sec. 4. "Other actions" defined.

"Other actions" means any additional proposal that would enable the political subdivision to cease being a distressed political subdivision.

Sec.5. "Petition" defined.

"Petition" means a petition filed with the DUAB by a distressed political subdivision under IC 6-1.1-20.3-6 requesting relief from the application of the Circuit Breaker credit for a calendar year.

Sec. 6. "Quorum" defined.

"Quorum" means a majority of the voting membership of the DUAB.

Note: Since the DUAB has nine (9) voting members, a quorum is at least five (5) voting members.

Sec. 7. "Uses of alternative or additional revenues" defined.

"Uses of alternative or additional revenues" means the replacement of property tax levies with revenue raised from the local option income tax, the replacement of property tax levies lost due to the

application of the circuit breaker credits with revenue raised from the local option income tax, and any other revenue source available to a political subdivision, including, for school corporations, the referendum levy under IC 20-46.

Sec 8. “Proposed budgets” defined.

“Proposed budgets” means an alternative budget, presented in substantially the same form as the actual budget adopted by the distressed political subdivision under IC 6-1.1-17, that would enable the distressed political subdivision to cease being a distressed political subdivision through the use of efficiencies, consolidations, cost reductions, uses of alternative or additional revenues, increases in the percentage thresholds (specified as a percentage of gross assessed value) at which the Circuit Breaker credit will apply, decreases to the Circuit Breaker credits (by percentages), including any varying percentages for different classes of property, or other actions.

Note: This proposed “best efforts” budget features the use of all of the tools in the “tool kit” in IC 6-1.1-20.3-6 for the distressed political subdivision to cease being a distressed political subdivision. This proposed budget may reflect a combination of budget reductions; expected revenues from the approval or increase in a local option income tax; estimated costs savings from intra-agency agreements, pooling of resources, or consolidations; and proposed increases in the percentage threshold at which the Circuit Breaker credit will apply to specific class(es) of property within the distressed political subdivision.

Sec 9. “Affected by the financial plan” defined.

A political subdivision with the authority to fund itself through property taxes that has a geographic area that encompasses, extends into, or overlaps with the geographic area of a distressed political subdivision is “affected by the financial plan” as that phrase is used in IC 6-1.1-20.3-8(a). A political subdivision is also “affected by the financial plan” if, as a feature of the financial plan, it agrees to consolidate with the distressed political subdivision or to assist the political subdivision implement efficiency practices or any other practices the political subdivision proposes to cease being a distressed political subdivision.

Rule 3. Timing and Delivery of Petition.

Sec. 1. The fiscal body of a distressed political subdivision shall submit their petition to the DUAB on or before December 8 for the next calendar year.

Sec. 2. The filing of the petition to the DUAB must be made to the Chairman of the DUAB (or designee) by:

- (a) personal delivery;
- (b) deposit in the first class United States mail;
- (c) registered or certified mail;
- (d) private carrier;
- (e) fax; or
- (f) electronic mail (e-mail) as an attachment;

on or before December 8.

Sec. 3. (a) The postmark date on a petition, correctly addressed and sent by United States:

- (1) first class mail;
- (2) registered mail; or
- (3) certified mail;

shall constitute prima facie proof of the date of filing.

(b) The date on which the petition is deposited with a private carrier, as shown by a receipt issued by the carrier, shall constitute prima facie proof of the date of filing if the document is sent to the DUAB by the carrier.

(c) The date-received stamp affixed to a petition filed by personal delivery shall constitute prima facie proof of the date of filing.

(d) The date-received affixed on a fax of a petition sent by a distressed political subdivision shall constitute prima facie proof of the date of filing.

(e) The date-received affixed on an email of a petition sent by a distressed political subdivision shall constitute prima facie proof of the date of the filing.

Rule 4. Valid Petitions and Scope of Review.

Sec. 1. Prior to submission of the petition to the DUAB, the petition shall be approved in the form of a resolution by the fiscal body of the distressed political subdivision.

Sec. 2. The contents of the petition shall include the following:

(a) The name of the distressed political subdivision, including the county or counties where the distressed political subdivision is located;

(b) The resolution adopted by the fiscal body of the distressed political subdivision approving the petition to the DUAB for relief from the Circuit Breaker credit for a calendar year;

(c) The calendar year for which the distressed political subdivision is requesting relief from the application of the Circuit Breaker credit;

(d) The financial plan as described in IC 6-1.1-20.3-6(b), including the proposed budgets of the distressed political subdivision that would enable the distressed political subdivision to cease being a distressed political subdivision;

(e) The budget adopted by the distressed political subdivision or the applicable fiscal body of the city, town, or county (if applicable) under IC 6-1.1-17 for the budget year in which relief is sought;

(f) The nonbinding recommendation of the county fiscal body issued to the distressed political subdivision under IC 6-1.1-17-3.5 regarding the distressed political subdivision's budget for the budget year in which relief is sought (if applicable);

(g) Current and projected growth in the number of residents and other citizens served by the distressed political subdivision;

(h) Salaries, duty title, and the department or division of employees of the distressed political subdivision;

(i) Prior and existing revenue and expenditures of the distressed political subdivision;

(j) Current and projected growth in the assessed value of property in the jurisdiction served by the distressed political subdivision;

(k) Factors directly related to the provision of public safety within the jurisdiction served by the distressed political subdivision;

(l) The specific type of relief from the application of the Circuit Breaker credit sought by the distressed political subdivision as described in IC 6-1.1-20.3-8(b); and

(m) Any other information the distressed political subdivision or DUAB may consider pertinent.

Sec. 3. (a) Failure to comply with the petition content requirements shall be cause for the petition to be returned to the distressed political subdivision for correction.

(b) The distressed political subdivision shall correct or cure the petition not more than ten (10) calendar days from the date of the notice of the defect.

Sec. 4. (a) Timely filed amendments to the originally filed petition by the distressed political subdivision are permitted.

(b) Amendments to petitions must be filed with the DUAB not more than ten (10) calendar days after the date of filing of the original petition.

(c) Amendments sought later than ten (10) calendar days after the date of filing of the original petition may only be filed with the approval of the chairperson of the DUAB.

Rule 5. Initial Hearing and Procedural Matters.

Sec. 1. The DUAB shall conduct an initial hearing not more than thirty (30) calendar days from the date of the filing of a petition by a distressed political subdivision. The chairperson of the DUAB shall set the initial hearing date and time on a petition.

Sec. 2. The purpose of the initial hearing is for the DUAB to review the petition of the distressed political subdivision, ask questions of the representatives of the distressed political subdivision about the petition and proposed financial plan, and provide comments to the distressed political subdivision on the formation of the distressed political subdivision's financial plan in accordance with IC 6-1.1-20.3-6 and IC 6-1.1-20.3-7.

Sec. 3. The distressed political subdivision shall provide the following to the DUAB at the initial hearing:

(a) Copies of documentary evidence and summaries of statements of testimonial evidence at least five (5) calendar days before the initial hearing;

(b) A list of witnesses and exhibits to be introduced at the hearing at least five (5) calendar days before the initial hearing;

(c) The documents described in IC 6-1.1-20.3-6(b); and

(d) Any other documents, testimony, or exhibits requested by the DUAB.

Sec. 4. Copies of all materials provided to the DUAB at the initial hearing shall become part of the administrative record.

Rule 6. Development of Financial Plan.

The distressed political subdivision shall work with the DUAB, taxpayers within the distressed political subdivision, and the governing body of each political subdivision in the county affected by the financial plan to ensure the development of a financial plan that is acceptable to the distressed political subdivision, each governing body of the political subdivisions in the county affected by the financial plan, and the DUAB.

Rule 7. Governing Body of Each Political Subdivision in the County.

Sec. 1. In accordance with IC 6-1.1-20.3-8(a), in order for the DUAB to authorize any relief from the Circuit Breaker credit for a calendar year, the governing body of each political subdivision in the county that is affected by the financial plan must adopt a resolution agreeing to the terms of the financial plan.

Sec. 2. The distressed political subdivision shall provide the DUAB, in one (1) package, a copy of each resolution adopted by the governing body of each political subdivision in the county that is affected by the financial plan.

Rule 8. Other Hearings.

The DUAB may conduct additional hearings as necessary at the direction of the chairperson of the DUAB.

Rule 9. Final Hearing.

Sec. 1. (a) Not more than thirty (30) calendar days after receipt of the one (1) package containing a copy of each resolution adopted by the governing body of each political subdivision in the county affected by the financial plan, the chairperson of the DUAB shall set the final hearing date.

(b) The purpose of the final hearing is for the DUAB to vote on an authorization of relief from the Circuit Breaker credit for the distressed political subdivision.

Sec. 2. The final hearing and vote shall be conducted by at least a quorum of the DUAB.

Sec. 3. (a) The DUAB shall consider the following prior to a vote on its final determination:

(1) Evidence, exhibits, briefs, and testimony submitted to the DUAB and part of the administrative record;

(2) Other documents made part of the record required to be considered by the DUAB in accordance with IC 6-1.1-20.3-7 and IC 6-1.1-20.3-8; and

(3) Any other factor considered relevant by the DUAB.

(b) The DUAB shall determine the relevance of the evidence, exhibits, briefs, testimony, documents, and any other factor.

(c) The DUAB is not required to assign greater weight to any one of the listed factors in IC 6-1.1-20.3-7. The DUAB does not have to consider any single factor dispositive in reaching its decision. The DUAB only has to consider each of the listed factors in IC 6-1.1-20.3-7, but the DUAB does not have to base its ultimate decision on those factors; specifically, the fourth factor in IC 6-1.1-20.3-7(b)(1)(D) [“any other factor considered relevant by the board”] grants the DUAB the discretion to consider any non-listed factor that it considers relevant to the petition of the distressed political subdivision.

Sec. 4. The DUAB, by a majority vote of the quorum present at the final hearing, may decide to provide any of the relief actions described in IC 6-1.1-20.3-8(b).

Rule 10. Final Determination.

Sec. 1. Not more than seven (7) calendar days after the final hearing, the DUAB shall issue a written final determination. The final determination shall contain the following:

(a) the final vote of the DUAB on the petition taken at the final hearing; and

(b) any relief actions approved by the DUAB under IC 6-1.1-20.3-8(b), if any, at the final hearing.

Sec. 2. The chairperson of the DUAB (or designee) shall sign the final determination on behalf of the DUAB.

Sec. 3. A copy of the final determination shall be provided by the DUAB to the governing bodies of the distressed political subdivision and any other political subdivision that approved the terms of the financial plan, the county auditor, Department of Local Government Finance, Department of Revenue, and State Board of Accounts.

Rule 11. Waiver of Deadlines.

The chairperson of the DUAB may waive any deadlines.

Rule 12. DUAB Audit.

Sec. 1. If the DUAB provides relief described in IC 6-1.1-20.3-8(b), the DUAB shall conduct audits and reviews as necessary to determine whether the affected political subdivision is abiding by the terms of the financial plan agreed to by the governing body of each political subdivision in the county that is affected by the financial plan.

Sec. 2. The Department of Local Government Finance and State Board of Accounts shall assist the DUAB in the audit process. The Department of Local Government Finance and State Board of Accounts shall use their statutory authority to enforce any DUAB final determination.

Rule 13. Judicial Review.

A distressed political subdivision may petition the Indiana Tax Court for judicial review of a final determination of the DUAB. The action must be taken to the Indiana Tax Court under IC 6-1.1-15 in the same manner that an action is taken to appeal a final determination of the Indiana Board of Tax Review (IBTR). The petition must be filed in the Indiana Tax Court not more than forty-five (45) days after the DUAB enters its final determination.